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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re Marriage of MARY FRANCES and ARTHUR KIYOSHI NIGORIZAWA.	B204900 (Los Angeles County Super. Ct. No. KD045418)
ARTHUR KIYOSHI NIGORIZAWA, Appellant, v. MARY FRANCES NIGORIZAWA, Respondent.	

APPEAL from a judgment of the Superior Court of Los Angeles County, Donna F. Goldstein, Judge. Affirmed.

Gregory T. Annigian for Appellant.

Law Offices of Doreen M. Mercado and M. Mercado for Respondent.

Husband Arthur Kiyoshi Nigorizawa appeals from the judgment in a dissolution action filed by wife Mary Frances Nigorizawa. Husband's sole contention on appeal is that the trial court lacked jurisdiction to resolve community property issues following discharge of his chapter 7 bankruptcy, in which wife was named as a debtor. We affirm.[1]

The Dissolution and Bankruptcy Actions

Husband and wife were married on September 14, 1968. Wife filed for dissolution of the marriage on March 23, 2000. The date of separation was in June 1999, but marital status was not terminated until July 1, 2007.

On September 1, 2004, while the dissolution action was pending, husband filed a chapter 7 voluntary bankruptcy petition. He estimated having 1 to 15 creditors, assets of $0 to 50,000, and debts of $50,001 to 100,000. Husband indicated his marital status was divorced.

Husband listed four creditors on a bankruptcy schedule entitled "Creditors Holding Unsecured Nonpriority Claims"—an accounting firm, husband's attorney, wife's attorney, and wife. Husband indicated wife's claim was $70,000, and the debt was incurred during the six-year course of divorce proceedings.

An explanation sheet served on the creditors stated: "There does not appear to be any property available to the trustee to pay creditors. *You therefore should not file a proof of claim at this time*. If it later appears that assets are available to pay creditors, you will be sent another notice telling you that you may file a proof of claim, and telling you the deadline for filing your proof of claim."

Husband was discharged from bankruptcy on December 13, 2004, pursuant to 11 U.S.C. section 727. The discharge indicates the bankruptcy resulted in a "no asset" estate.

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[1] By motion, wife has moved for sanctions against husband for filing a frivolous appeal. The motion for sanctions has been denied in a separate order.

The dissolution matter returned to the family law court, and following a bench trial, the court entered a judgment on November 1, 2007, resolving issues of spousal support, community property, and attorney fees.[2] As to distribution of disputed items of community property, the court awarded wife the following assets: $30,296 from three business investments; $1 million from a promissory note related to the sale of a business; participation rights from the sale of the business; $19,000 from husband's 401K plan; and $24,742 from husband's pension plan. In addition, husband's counsel was ordered to transfer $20,000, which he was holding in trust, to wife.

The family law court rejected husband's jurisdictional contention that all community property interests had been extinguished by his discharge from chapter 7 bankruptcy. Although wife was listed as a creditor in the petition, husband did not list any of the disputed community property interests, and in fact, the petition was treated as a "no asset" estate. Husband misrepresented in his petition that he was divorced, while the true fact was no judgment of dissolution had been entered. Also, husband misrepresented his employment and earnings. In light of these factors, the family law court ruled the marital property it divided was not discharged in husband's bankruptcy action.

DISCUSSION

Husband's only contention on appeal is that wife's failure to initiate adversary proceedings in the bankruptcy court extinguished all community property. After the bankruptcy discharge, the family law court lacked jurisdiction to determine the parties' rights to what had been community property. In husband's view, there was no community property after the discharge.

We agree with the family law court and wife that this case is controlled by the reasoning in *In re Marriage of Seligman* (1993) 14 Cal.App.4th 300 (*Seligman*). In

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[2] Husband has expressly abandoned any challenge to the amount of spousal support or attorney fees.

Seligman, after a dissolution petition was filed, the husband and wife each filed separate chapter 7 petitions in bankruptcy. The wife named the husband as a creditor, scheduled community property in her petition, and alleged the community property was exempt from administration as part of her bankrupt estate. (*Id.* at p. 302.) The wife's bankruptcy was treated by the trustee as a "no asset" action. (*Id.* at p. 303, fn. 3.) After discharge, the family law court divided the community property, over the wife's objection that the court lacked jurisdiction to divide property listed in her bankruptcy petition. (*Id.* at p. 303.)

According to *Seligman*, "it seems unmistakably clear that wife's principal contention is that her discharge in bankruptcy, without more, operated to deprive the state court of jurisdiction to divide between the spouses the community property in her possession. More particularly, her brief states, 'It is clear from the timing of the bankruptcy petitions that [wife] and [husband] intended to discharge their obligations to one another as well as their obligations to third parties. In spite of the ruling of the trial court, it is clear that this is what they did. Both of them received their discharges before the court divided the personal property and ordered [wife] to make an equalization payment.'" (*Seligman*, *supra*, 14 Cal.App.4th at pp. 305-306, fn. omitted.)

The *Seligman* court was decidedly unmoved by the wife's argument. The effect of wife's position "is that the ultimate ownership and right to possession of personalty, abandoned by the trustee in bankruptcy, *depends on pure chance*, i.e., under wife's contention, whoever happens to have possession of the abandoned property when discharge occurs ends up owning it. We suggest that community property rights cannot be divested on any such gaming theory." (*Seligman*, *supra*, 14 Cal.App.4th at pp. 307-308.)

With notable disdain, *Seligman* dissected and rejected the wife's argument by way of example. "Take this scenario: Wife, over the years, slowly accumulated $136,049 worth of personal property (actually, the amount divided by the judgment of Mar. 21, 1989), and stored it in one of those self-storage operations. Then she filed a petition to dissolve the marriage. Next, she petitioned in bankruptcy, listing her husband as a

creditor and scheduling all the property in the self-storage locker as exempt. Wife's trustee then abandoned the stored property, as here, after which wife obtained a discharge in bankruptcy. As argued by wife to the trial court and on this appeal, the *prospective* division of the scheduled community property by the family law court created a debt which was then discharged in bankruptcy, with the result that ipso facto the abandoned community property became wife's separate property which wife argued the family law court had no jurisdiction to divide. By this legal legerdemain, if permitted, husband would have been euchred out of $68,024.50 worth of what once was community property by means of some unilateral, mystic transmutation which he was powerless to forestall. The scenario recounted above, in effect, describes the proposed disposition of this case, as urged upon us by wife. Its recounting is enough to demonstrate its absurdity." (*Seligman*, *supra*, 14 Cal.App.4th at p. 308.)

"A correct analysis of the jurisdiction issue, in our view, starts with the recognition of an undivided one-half community interest owned by each of the parties in the exempted personal property in wife's possession and vested as such before the judgments which divided it. It is manifest that the wife's scheduling of property as exempt in her bankruptcy petition did not operate to divest husband of his community interest in such property by way of transmuting it into her separate property. As correctly observed by [the wife's trial counsel], on one occasion, only a family law court judgment could do that. In other words, the bankruptcy court to which wife turned to file her petition never had jurisdiction over *husband's community interest* in that property. (Cf. *Matter of Tyree* (Bankr. S.D. Iowa 1990) 116 Bankr. 682.) Moreover, once wife's trustee abandoned all property she had scheduled, 'any title that was vested in the trustee [in bankruptcy] was extinguished, and the title revert[ed] to the bankrupt, nunc pro tunc.' (*Mason v. C.I.R.* (9th Cir. 1980) 646 F.2d 1309, 1310.) In other words, the bankruptcy court had no further interest in the disposition of such property. (*Ibid.*) In short, the scheduling of the community property by wife in her bankruptcy petition did not operate to oust state court jurisdiction to deal with the community interests of these parties in

what was otherwise finally adjudicated by the bankruptcy court to be exempt and abandoned property." (*Seligman, supra,* 14 Cal.App.4th at pp. 308-309, fn. omitted.)

The example spelled out in *Seligman* demonstrates the flaw in husband's position. Husband's chapter 7 bankruptcy petition was filed after dissolution proceedings commenced but before the community property issues were resolved in state court. As to wife, he only listed an undefined $70,000 debt. The trustee treated the action as a "no-asset" estate. Husband now claims that listing one undefined debt somehow extinguishes wife's right to in excess or $1 million in community assets.

Finally, *Seligman* summarized its conclusions. "[W]e hold that wife's discharge in bankruptcy was ineffective to insulate her from husband's right to a division of the community personal property, as accomplished by the challenged judgments. We hold further that wife's scheduling of certain personal property as exempt in her bankruptcy petition did not transmute it from community property into her separate property. We hold yet further, once wife's trustee in bankruptcy abandoned everything she had scheduled by filing his 'no asset' report, that property was no longer subject to disposition by the bankruptcy court. Thus, if the community property was not transmitted by its initial scheduling as part of wife's bankruptcy petition, and if that property was later abandoned by the trustee, with the result that it was no longer to be administered in settling wife's bankrupt estate, there was no impairment whatsoever to the trial court's exercise of its traditional jurisdiction to divide the community property between the erstwhile spouses." (*Seligman, supra,* 14 Cal.App.4th at p. 310.)

As wife points out, husband's failure to list the community property as a debt in his chapter 7 petition makes this a more compelling case than *Seligman* for jurisdiction in the family law court over community property. As noted, even though the wife in *Seligman* listed the community property in her petition, the family law court retained jurisdiction over the community assets. A similar result follows here.

Wife cited *Seligman* to the family law court, which relied upon it in rejecting husband's position below. Husband's opening brief inexplicably makes no mention of *Seligman*. Respondent's brief filed by wife prominently relies on *Seligman*. Husband

has not filed a reply brief to distinguish the case or attempt to convince this court that *Seligman* was incorrectly decided. We are satisfied *Seligman* correctly states the law and supports the judgment.

The authorities relied upon by husband on appeal provide no support for his position. *In re Siragusa* (9th Cir. 1994) 27 F.3d 406 (*Siragusa*) involved a dissolution action that resulted in an award of alimony and a property settlement *that were reduced to a money judgment* before the husband's bankruptcy discharged his property settlement obligations to the wife. *Siragusa* held that the money judgment that resulted from the property settlement was a debt discharged in bankruptcy (under a former version of the statute), but alimony was not discharged under bankruptcy law and could subsequently be modified in state court. (*Id.* at p. 407.) Unlike the posture in *Siragusa*, wife's community property rights had neither been settled nor reduced to a money judgment at the time of husband's bankruptcy and subsequent discharge, so there was no debt to discharge.

In re Marriage of Lynn (2002) 101 Cal.App.4th 120 arose in the same posture as *Siragusa*, in that the husband's property settlement obligation was discharged in a bankruptcy action five years after the settlement was entered. After discharge of the property settlement debt, the wife obtained an order for a modification of spousal support, and the husband appealed. The Court of Appeal held that the family law court could not simply substitute spousal support to offset the discharged property settlement and remanded the cause to the family law court to allow for consideration of the statutory factors relevant to the setting of spousal support. (*In re Marriage of Lynn*, *supra*, at pp. 133-134.) Again, *In re Marriage of Lynn* involved a community property debt that had been litigated, while wife's community property rights remained to be determined in this case and had not been reduced to a judgment dischargeable as a debt. As there was no debt to be discharged in bankruptcy, wife had no obligation to raise the issue in an adversary bankruptcy proceeding.

In addition to relying on *Seligman*, wife raises numerous other grounds to support the ruling of the trial court. In view of our disposition of the issue, we need not address the additional arguments tendered by wife.

DISPOSITION

The judgment is affirmed. Respondent Mary Frances Nigorizawa is awarded costs on appeal.

KRIEGLER, J.

We concur:

TURNER, P. J.

MOSK, J.